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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

KYLE AVERY,

Defendant and Appellant.

C069476

(Super. Ct. Nos.
04F10820, 06F04071)

In a combined disposition of two pending criminal matters¹ defendant Kyle Avery pled no contest to two counts of possessing a weapon in prison and admitted a prior strike conviction. Sentenced to a combined, aggregate prison term of 10 years, defendant appeals.

On appeal, defendant contends the trial court failed to exercise its discretion when the court imposed the minimum

¹ Sacramento County Superior Court, cases Nos. 04F10820 and 06F04071.

restitution fines under Penal Code² section 1202.4. We disagree and affirm the judgment of the court.

BACKGROUND³

During entry of his plea, defendant stated his objection to imposition of the mandatory restitution fines under section 1202.4. The trial court noted its standard practice was to impose a \$200 restitution fine if the plea was taken before the preliminary hearing, and \$400 if the plea was taken after the preliminary hearing. The court nevertheless indicated a willingness "to impose a \$200 fine, which is the mandatory minimum. I can't go any less than that." Defendant assented.

Immediately following entry of his plea, defendant waived a referral to the probation department for a sentencing report. Defendant said there was no legal cause why judgment and sentence should not be pronounced at that time, then noted his objection to the court's imposition of the "mandatory minimum \$200 fine." The trial court asked if defendant wanted to make any further statement, defendant did not, and the matter was submitted.

The trial court then sentenced defendant according to the terms of his plea agreement. The trial court also imposed a \$200 restitution fine in both cases, along with matching \$200

² Undesignated statutory references are to the Penal Code unless otherwise indicated.

³ The facts related to defendant's crimes are not relevant to the issue on appeal.

parole revocation fines. The court further ordered defendant to pay the court facility fee and the court security fee. The court then waived the remaining fines and fees based on defendant's inability to pay. Defendant appeals.

DISCUSSION

Defendant's only claim on appeal is that the trial court failed to understand it had the discretion not to impose section 1202.4 restitution fines if the court found compelling and extraordinary reasons for doing so. Defendant's claim is forfeited and fails in any event.

I

Forfeiture

Objections to a sentence imposed must be sufficiently specific to provide the trial court a meaningful opportunity to correct any errors. (*People v. de Soto* (1997) 54 Cal.App.4th 1, 9.) Failure to do so results in forfeiture of those claims on appeal. (*Id.* at p. 10.)

Here defendant twice objected to imposition of the restitution fines "but gave no legal or factual basis to support the objection." (*People v. de Soto, supra*, 54 Cal.App.4th at p. 9.) Thus, he made no argument and presented no evidence of compelling or extraordinary circumstances excepting him from imposition of the restitution fine. He is thus precluded from raising that claim on appeal.

Defendant now argues such compelling and extraordinary circumstances can be found in the transcript of his *Marsden*⁴ hearing. That hearing took place more than two years before defendant was sentenced; arguments made at that hearing do not preserve the objection. (*People v. de Soto, supra*, 54 Cal.App.4th at p. 9 [objections must be raised contemporaneously with pronouncement of sentence].)

Accordingly, the claim is forfeited. The claim fails in any event.

II

The Trial Court's Discretion

Section 1202.4, subdivision (b)(1) requires the trial court, following a felony conviction, to impose a restitution fine of not less than \$200, and not more than \$10,000, unless the court finds compelling and extraordinary reasons for not doing so. Thus, trial courts have some discretion in imposing a restitution fine. Defendant contends the trial court here "did not understand that it had such discretion." We are not persuaded.

During entry of defendant's plea, defendant objected to the restitution fine. The trial court indicated the restitution fine was "mandatory." The court agreed to reduce the proposed fine of \$400 to the statutory minimum, but noted the court "can't go any less than that."

⁴ *People v. Marsden* (1970) 2 Cal.3d 118.

Moments later during sentencing, defendant again objected to imposition of the restitution fine. The court responded: "All right. Does defendant or either party wish to make any further statements?" Defendant refused the offer.

The trial court's statements were correct. Defendant's bare objection to imposition of the restitution fine was not evidence of compelling or extraordinary circumstances. Absent compelling or extraordinary circumstances, imposition of the restitution fine was mandatory, and \$200 is the statutory minimum. (§ 1202.4, subd. (b)(1).) Accordingly, the trial court did not err in failing to exercise its discretion. On the contrary, defendant failed to offer evidence warranting the court's exercise of discretion. There was no error.

DISPOSITION

The judgment is affirmed.

ROBIE, Acting P. J.

We concur:

MAURO, J.

HOCH, J.